

§ 947.846 Individual civil penalties.

Part 846 of this chapter, *Individual Civil Penalties*, shall apply to the assessment of individual civil penalties under section 518(f) of the Act.

[53 FR 3676, Feb. 8, 1988]

§ 947.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 948—WEST VIRGINIA

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AUTHORITY: 30 U.S.C. 1201 *et seq.*

§ 948.1 Scope.

This part contains all rules applicable only within West Virginia that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[46 FR 5954, Jan. 21, 1981]

§ 948.10 State regulatory program approval.

The West Virginia program, as submitted on March 3, 1980, as clarified on July 16, 1980, and as resubmitted on December 19, 1980, is conditionally approved, effective January 21, 1981. Beginning on that date and continuing until July 11, 1985, the Department of

Natural Resources was deemed the regulatory authority in West Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Beginning on July 11, 1985, the Department of Energy was deemed the regulatory authority pursuant to the program transfer provisions of Enrolled Committee Substitute for House Bill 1850, as signed by the Governor of West Virginia on May 3, 1985. Beginning on October 16, 1991, the Division of Environmental Protection was deemed the regulatory authority pursuant to Enrolled Committee Substitute for House Bill 217 that was signed by the Governor on October 25, 1991. On December 3, 1991, OSM found that it was not necessary to amend the State program to effect the redesignation of the regulatory authority from the Division of Energy to the Division of Environmental Protection (58 FR 42904, August 12, 1993). Beginning on April 14, 2001, the Department of Environmental Protection was deemed the regulatory authority pursuant to Enrolled Committee Substitute for House Bill 2218. The bill, which was signed by the Governor on April 30, 2001, transferred programs and redesignated the Division of Environmental Protection as the Department of Environmental Protection within the executive branch. Copies of the conditionally approved program, as amended, are available at:

(a) Office of Surface Mining, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301-2816. Telephone: (304) 347-7158.

(b) West Virginia Department of Environmental Protection, Division of Mining and Reclamation, 10 McJunkin Road, Nitro, West Virginia 25143-2506. Telephone: (304) 759-0510.

[66 FR 67453, Dec. 28, 2001]

§ 948.12 State statutory, regulatory, and proposed program amendment provisions not approved.

(a) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on May 11, 1998:

(1) CSR 38-2-3.14, to the extent that it could be interpreted as applying to the on-site reprocessing of abandoned coal mine waste piles or to the extent that

it would apply to the removal of abandoned coal refuse piles where, on average, the material to be removed meets the definition of coal in 30 CFR 700.5.

(2) CSR 38-2-3.32.g., which concerns unanticipated events or conditions.

(3) CSR 38-2-14.14.a.1., which concerns placement of excess spoil outside the permit area.

(4) CSR 38-2-23, which concerns coal extraction as part of land development activities.

(5) CSR 38-2-24.4, which concerns water quality standards for bond release.

(b) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on March 14, 2000, March 28, 2000, and April 6, 2000:

(1) The proviso at W.Va. Code 22-3-23(c)(2)(C) which concerns Phase III bond release where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

(2) At CSR 38-2-7.4.b.1.C.5., the phrase, “except for ponds and impoundments located below the valley fills.”

(3) At CSR 38-2-7.4.b.1.D.2, the phrase, “except for those areas with a slope of at least 50%.”

(4) At CSR 38-2-7.4.b.1.G.1., the word “excessive.”

(5) At CSR 38-2-7.4.b.1.I., the new stocking standards for commercial forestry and forestry.

(6) At CSR 38-2-7.4.b.1.I.2., the phrase, “where there is potential for excessive erosion on slopes greater than 20%.”

(7) At CSR 38-2-7.4.b.1.I.2., the words “rock cover.”

(8) At CSR 38-2-7.4.b.1.I.3., the phrase “or, if a commercial forestry mitigation plan is submitted to the Director, and approved and completed.”

(9) The portion of CSR 38-2-7.4.b.1.I.4. concerning in-kind mitigation plans.

(10) At CSR 38-2-14.12.a.1., the term “commercial forestry.”

(c) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on March 14, 2000, March 28, 2000, and April 6, 2000:

(1) At CSR 38-2-7.5.j.3.B., the phrase, “except for those areas with a slope of at least 50%” is not approved, and the

phrase, “and other areas from which the applicant affirmatively demonstrates and the Director of the WVDEP finds that soil cannot reasonably be recovered” is not approved.

(2) At CSR 38-2-7.5.j.6.A., the word “excessive” in the phrase “excessive erosion” is not approved.

(3) At CSR 38-2-7.5.o.2., the new planting arrangements and stocking standards are not approved.

(4) At CSR 38-2-7.5.o.2., the words “rock cover” are not approved.

(d) [Reserved]

(e) Section 22A-3-23(c)(3) of the Code of West Virginia is found inconsistent with Section 519(c)(3) of SMCRA to the extent that it states: “*Provided, however,* That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.”

(f) Section 22A-3-12(e) of the Code of West Virginia is found inconsistent with Section 515(e) of SMCRA.

(g)-(i) [Reserved]

[48 FR 52053, Nov. 16, 1983, as amended at 50 FR 28323 and 28342, July 11, 1985; 55 FR 21337, May 23, 1990; 61 FR 6535, Feb. 21, 1996; 65 FR 26135, May 5, 2000; 65 FR 50430, Aug. 18, 2000; 65 FR 80328, Dec. 21, 2000]

§ 948.13 State statutory and regulatory provisions set aside.

(a)-(b) [Reserved]

(c) The following wording in section 22A-3-23(c)(3) of the Code of West Virginia is inconsistent with section 519(c)(3) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

Provided, however, That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

(d) Section 22A-3-12(e) of the Code of West Virginia is inconsistent with section 515(e) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside in its entirety.

(e)-(f) [Reserved]

[50 FR 35084, Aug. 29, 1985, as amended at 61 FR 6535, Feb. 21, 1996]

§ 948.15 Approval of West Virginia regulatory program amendments.

The following table lists the dates that West Virginia submitted proposed amendments to OSM, the dates when OSM published final rules approving all or portions of those amendments in the FEDERAL REGISTER, and the State statutory or regulatory citations for those

amendments (or a brief description of the amendment). The amendments appear in order of the date of publication of the final rules announcing OSM's decisions on the amendments. The preambles to those final rules identify and discuss any assumptions underlying approval, any conditions placed on the approval, and any exceptions to the approval.

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
October 29, 1981	May 11, 1982	§ 10.
June 17, 1982	September 10, 1982	§ E.03 of the State's coal refuse disposal regulations.
September 14, 1982, October 29, 1982.	March 1, 1983	§§ 4D.04h; 6A.02a.6; 6B.02, .07c.2, f; 7A.02a.6; 12B.07; 15A.01; Part H concerning alternative bonding system.
February 16, 1983, April 29, 1983, June 15, 1983, September 13, 1983.	November 16, 1983	Technical Handbook of Standards and Specifications for Mining Operations; applicability; bond release procedures for interim program permits; incidental mining.
January 12, 1984	September 20, 1984	Chapter 22-4 Series—blaster certification program.
November 20, 1984 ..	April 23, 1985	Chapter 22-4 Series, § 6.01(B), 9—blaster certification program.
March 30, 1984, October 30, 1984, May 20, 1985, June 14, 1985.	July 11, 1985	Reclamation and coal refuse disposal; Transfer of program authority; permit addendum and Chapter 20, Revegetation, of the Technical Handbook for Surface Mining; permit or significant revision to a permit; the coal exploration approval document; civil penalty procedures; assessable and non-assessable violations.
November 11, 1985 ..	March 20, 1986	Financial analysis and supporting documentation demonstrating sufficient money in the special reclamation fund; withdrawals from the fund; noncoal administrative expenses.
June 30, 1986, April 26, 1986.	May 23, 1990	Code of Violations; Replacement of all regulations in chapter 20, Article 6, Series VII and VII-A (1985) with new set of Legislative Rules at title 38, Series 2.
June 29, 1990	October 4, 1991	CSR 38-2 §§ 2, 3, 5, 6, 9, 11 through 14, 17, 20, 22.
July 12, 1991	November 19, 1991	CSR 38-2-20.5, .6, .7.
July 30, 1993	August 16, 1995	CSR 38-2-14.14(b)(4), (g)(1)(B), (g)(8), (11), (12).
June 28, 1993	October 4, 1995, February 21, 1996.	WV Code 22-1-4 through -8; 22-2; 22-3-3, -5, -7, -8, -9, a, -11(a), (g), -12, -13, -15, -17, -18, -19, -22, -26, -28, -40; 22B-1-4 through -12; 22B-3-4; 22B-4; CSR 38-2-1.2, -2, -3.1(o), .4, .6, .7, .8, .12, .14, .15, .16, .25, .26, .27(a), .28, .29, .30, .31(a), .32, .33, .34, -4, .1(a), .2 through .12, -5.2, .4, .5, -6, .3(b), .6, .8, -8.1, -9, -11.1 through .7, -12.2, .3, .4(a), (2)(B), (c) through (e) except the words "other responsible party" at (e) are not approved, .5, -13, -14.5, .8, .11, .12, .14, .15, .17, .18, .19, -15.2, -16.2, -17, -18.3, -20.1, .2, .4 through .7, -22; 38-2C-4, -5, -8.2, -10.1, -11.1; 38-2D-4.4(b), -6.3(a), -8.7(a).
April 2, 1996	July 24, 1996	CSR 38-2-4.12, -5.4(c), -12.2(e), -14.3(c), .14(e)(4), .15(m).
February 23, 1998	July 14, 1998	WV Code Sections 22B-1-7(d), 7(h); 22B-3-4. WV Regulations CSR 38-2-1.2(c)(1). Vacating of retroactive approval published on February 21, 1996.
April 28, 1997	February 9, 1999	W.Va. Code 22-3 Sections 3(u)(2)(1) (decision deferred), (2)(not approved), (3); 3(x), (y) (partial approval), (z) (partial approval); 13(b)(20), (22), (c)(3) (decision deferred); 15(h); 17(b); 18(c), (f); 28 (a-c) (not approved), (d), (e) (decision deferred), (f). WV Regulations CSR 38-2 Sections 2.4, 2.43 (not approved), 2.95 (not approved), 2.108, 2.120; 3.2.e; 3.12.a.1 (partial approval), .2 (partial approval); 3.14.b.7 & .8 deleted, .12.E, .15.B deleted, .13.B; 3.29.a (partial approval); 3.35; 5.5.c; 6.5.a; 8.2.e; 9.2.i.2; 9.3.h.1, .2; 14.11.e, f, g, h; 14.15.b.6.A, .c, .d; 16.2.c (partial approval), .2, .3, .4 (partial approval for .4); 20.1.e
April 28, 1997	May 14, 1999	W.Va. Code 22-3 Section 13(c)(3) [not approved].
May 11, 1998	May 5, 2000	West Virginia regulations at CSR 38-2-2.25; 2.102; 3.32.d.12; 14.16 through 14.19; 22.5.1; 24 (except 24.4).
May 5, 1999	October 1, 1999	CSR 38-2-2.11; 2.78; 3.12.a.2, and .2B; 3.32.b; 3.35; 14.12.a.1; 16.2.c, and .c.3; and 22.4.g.
March 25, 1999	November 12, 1999	W.Va. Code 22-1-7(a)(7); 22-3-13(a), (b)(3) and (15), (e), and (f); 22-3-13a, in 13a(g) the words "upon request" are not approved, in 13a(j)(2) the phrase "or the surface impacts of the underground mining methods" is not approved; 22-3-22a; 22-3-23(c)(3) decision is deferred; 22-3-24(c), (d), (e), and (f); 22-3-30a, in 30a(a) the phrase "of overburden and coal" is not approved, 30a(c) and (f) are not approved; and 22-3A.

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Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
March 14, 2000, March 28, 2000, and April 6, 2000.	August 18, 2000	W.Va. Code 22-3- at 3(e), (u)(2); (y); 13(c)(3) (qualified approval), (c)(3)(B)(iii); 23(c)(1), (2) (partial approval), CSR 38-2- at 2.31, 2.45, 2.98, 2.123, 2.136; 3.8c; 3.25; 7.2.i; 7.3; 7.4.a (qualified approval); 7.4.b.1; 7.4.b.1.A. (qualified approval), 7.4.b.1.B., C. (partial approval), D. (partial approval), E. (qualified approval), F., G. (partial approval), H., I. (partial approval), J. (qualified approval), K.; 14.15.f.
March 14, 2000, March 28, 2000, and April 6, 2000.	12/21/00	CSR 38-2-7.5.(qualified approval), 7.5.a., b., c., d., e. (qualified approval), f. (qualified approval), g. (qualified approval), h. (h.2.B. is a qualified approval), i. (i.1.B., i.3.H., i.3.Q. and i.7.A., and i.10. are qualified approvals), j. (j.2.C. and j.2.E. are qualified approvals; j.3.B. partial approval; j.4. qualified approval, j.6.A. partial approval, j.6.B. qualified approval, j.7. qualified approval), k. (qualified approval), l., m., n., o. (qualified approval; o.2. is a partial approval).
September 24, 2001	December 28, 2001	W. Va. Code 22-1-17; 22-3-11(a), (c), (d), (g) through (n); 22-3-12(a) through (f).
November 30, 2000; May 2, 2001; November 28, 2001; February 26, 2002; March 8, 2002.	May 1, 2002	Emergency rule provisions: CSR 38-2-3.12.a.1, a.2, a.2.B; 5.4.b.8, d.3; 16.2.c.4. Policy/guidance documents submitted February 26, 2002: Attachments 1A; 2P; 3P and the updated listing (Administrative Record Number WV-1278); 4 except examples 1 and 3 through 8; 6; and 9. Policy/guidance documents submitted March 8, 2002: Attachments 1; 3A; and 8. In House Bill 2663: CSR 38-2-3.12.a.1; 3.14.a; 12.2.e; 12.4.e; 14.8.a.6; 16.2.c.4; and 24.4. In Senate Bill 689: W. Va. Code 22-3-13a(g), (j); 30a(a). CSR 38-2-12.5.d.
September 24, 2001 April 9, 2002	May 29, 2002	

[62 FR 9957, Mar. 5, 1997, as amended at 63 FR 37777, July 14, 1998; 64 FR 6217, Feb. 9, 1999; 64 FR 26295, May 14, 1999; 64 FR 53203, Oct. 1, 1999; 64 FR 61507, Nov. 12, 1999; 64 FR 61518, Nov. 12, 1999; 65 FR 10390, Feb. 28, 2000; 65 FR 26135, May 5, 2000; 65 FR 50430, Aug. 18, 2000; 65 FR 80328, Dec. 21, 2000; 66 FR 67454, Dec. 28, 2001; 67 FR 21932, May 1, 2002; 67 FR 37626, May 29, 2002]

§ 948.16 Required regulatory program amendments.

Pursuant to 30 CFR 732.17, West Virginia is required to submit the following proposed program amendments by the dates specified:

(a-pppp) [Reserved]

(qqqq) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to delete the proviso from W. Va. Code 22-3-23(c)(2)(C) which provides that Phase III bond can be released if the quality of postmining untreated discharge water is better than or equal to the premining water quality discharged from the site.

(rrrr) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-2.31.b. to clearly define forestry to mean a postmining land use used or managed for the long term pro-

duction of wood or wood products in accordance with the Federal definition of forestry under the definition of land use at 30 CFR 701.5.

(ssss) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-3.25 to: (1) add the word "reinstatement" to the phrase "transfer, assignment, or sale" in the second sentence of subdivision CSR 38-2-3.25.a.4., and (2) amend 38-2-3.25.b. to provide that in no event can a reinstated permit be approved in advance of the close of the public comment period.

(tttt) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to make it clear that at CSR 38-2-7.4.a.1., only commercial forestry postmining use and not forestry postmining use may be approved for areas receiving a variance from the AOC requirements.

(uuuu) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to either remove the phrase, "except for ponds and impoundments located below the valley fills," from its regulations at CSR 38-2-7.4.b.1.C.5 or revise the language to clarify that ponds and impoundments below the fill that are left in place must meet the requirements of CSR 38-2-5.5.

(vvvv) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to delete the phrase "except for those areas with a slope of at least 50%" from its regulations at CSR 38-2-7.4.1.D.2. Furthermore, the State must define the terms O and Cr soil horizons.

(wwww) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-7.4.b.1.D.6. to provide that the substitute material is equally suitable for sustaining vegetation as the existing topsoil and the resulting medium is the best available in the permit area to support vegetation.

(xxxx) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to: (1) delete the word "excessive" at CSR 38-2-7.4.b.1.G.1.; and (2) provide that at CSR 38-2-7.4.b.1.G.1., lesser or no vegetative cover may only be authorized by the Director when mulch or other soil stabilizing practices have been used to protect all disturbed areas and it has been demonstrated that the reduced vegetative cover is sufficient to control erosion and air pollution attendant to erosion regardless of slope.

(yyyy) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to amend CSR 38-2-7.4.b.1.G.3. to require the repair of all rills and gullies that disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of

water quality standards for the receiving stream.

(zzzz) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-7.4.b.1.H.2. by deleting "7.4.d.1.G.1." in two places and replacing the deleted citation with "7.4.b.1.H.1."

(aaaa) By October 17, 2000, West Virginia WVDEP must consult with and obtain the approval of the West Virginia Division of Forestry on the new stocking standards for commercial forestry and forestry at CSR 38-2-7.4.b.1.I.

(bbbbb) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-7.4.b.1.I.2., or otherwise amend the West Virginia program, to delete the phrase, "where there is potential for excessive erosion on slopes greater than 20%."

(ccccc) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-7.4.b.1.I.2. to delete the words "rock cover."

(dddd) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-7.4.b.1.I.2. to correct the citation error by deleting "7.4.d.1.G.1." and replacing the deleted citation with "7.4.b.1.H.1."

(eeee) By October 17, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to delete the term "commercial forestry" at CSR 38-2-14.12.a.1.

(ffff) By February 20, 2001, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-7.5.b.3., or otherwise amend the West Virginia program to clarify that parcels retained by the landowner

for commercial development and incorporated within the Homestead area must be developed for commercial uses as provided by subdivision CSR 38-2-7.5.g.5.

(ggggg) By February 20, 2001, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-7.5.i.1.B., or to otherwise amend the West Virginia program, to clarify that roads which meet the definition of road at CSR 38-2-2.59 and 38-2-4.1 and that are to be retained as part of the postmining land use must be designed and constructed to meet the primary road requirements of CSR 38-2-4.

(hhhhh) By February 20, 2001, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-7.5.i.3.Q., or otherwise amend the West Virginia program, to require that all permanent impoundments approved for Homestead postmining land use must comply with CSR 38-2-3.6.b.1. and 38-2-5.5 concerning permanent impoundments.

(iiiiii) By February 20, 2001, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-7.5.i.10., or otherwise amend the West Virginia program, to require compliance with the permit requirements at CSR 38-2-3.5.d.

(jjjjj) By February 20, 2001, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-7.5.j.3.A. by adding an "E" horizon.

(kkkkk) By February 20, 2001, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-7.5.j.3.B. to delete the phrase, "except for those areas with a slope of at least 50%," and to delete the phrase, "and other areas from which the applicant affirmatively demonstrates and the Director of the WVDEP finds that soil cannot reasonably be recovered."

(lllll) By February 20, 2001, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-7.5.j.3.E., or otherwise amend the West Virginia program, to provide that the soil substitute material must be equally suitable for sustaining vegetation as the existing topsoil and the resulting medium is the best available in the permit area to support vegetation.

(mmmmm) By February 20, 2001, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to delete the word "excessive" from CSR 38-2-7.5.j.6.A.

(nnnnn) By February 20, 2001, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-7.5.j.6.B., or otherwise amend the West Virginia program, to require the repair of all rills and gullies that disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of water quality standards for the receiving stream.

(ooooo) By February 20, 2001, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to consult with and obtain the approval of the West Virginia Division of Forestry and the Wildlife Resources Section of the Division of Natural Resources on the new stocking standards and planting arrangements at CSR 38-2-7.5.o.2.

(ppppp) By February 20, 2001, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-7.5.o.2., or otherwise amend the West Virginia program, to identify the applicable revegetation success standards for each phase of bond release on Commercial Parcels, Village Parcels, Rural Parcels, Civic Parcels and Common Lands. In the meantime, no bond release for Commercial Parcels, Village Parcels, Rural Parcels, Civic Parcels or Common Lands can be

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approved until a revegetation standard is approved.

(qqqq) By February 20, 2001, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to delete the words "rock cover" from CSR 38-2-7.5.o.2.

(rrrr) By February 20, 2001, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend: (1) CSR 38-2-7.5.a. to clarify whether or not the calculated acreage of the Commercial Parcel(s) is to be summed with the total Homestead acreage for the purpose of calculating the acreage of other various components of the Homestead Area (such as Common Lands, Village Parcels, Conservation Easement, etc.); and (2) CSR 38-2-7.5.1.4 to clarify whether or not the acreage for Public Nursery is to be calculated based on the amount of acreage available for the Village Homestead, the Civil Parcel, or the entire Homestead Area.

[50 FR 28324, July 11, 1985 and 50 FR 38652, Sept. 24, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 948.16, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Original amendment submission date	Date of final publication	Citation/description
May 20, 1985	July 11, 1985	Transfer of program authority to the Department of Energy (HB 1850).
December 30, 1987 ..	August 26, 1988	Agency structure, public participation procedures, assumption of emergency reclamation program.
September 17, 1991, October 25, 1991.	March 26, 1993	Amendments contained in House Bill 2492; Expanded eligibility criteria; Acid mine drainage treatment and abatement program.

[62 FR 9958, Mar. 5, 1997]

§ 948.26 Required abandoned mine land reclamation program/plan amendments. [Reserved]

§ 948.30 State-Federal Cooperative Agreement.

COOPERATIVE AGREEMENT

This is a Cooperative Agreement (Agreement) between the State of West Virginia (State) acting by and through the Governor, and the United States

30 CFR Ch. VII (7-1-02 Edition)

§ 948.20 Approval of State abandoned mine land reclamation plan.

The West Virginia Abandoned Mine Reclamation Plan as submitted on October 29, 1980, and as amended on December 12, 1980, is approved effective February 23, 1981. Copies of the approved plan are available at the following locations:

(a) Office of Surface Mining, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301-2816. Telephone: (304) 347-7158.

(b) West Virginia Department of Environmental Protection, Abandoned Mine Lands and Reclamation, 10 McJunkin Road, Nitro, West Virginia 25143-2506. Telephone: (304) 759-0521.

[66 FR 67454, Dec. 28, 2001]

§ 948.25 Approval of West Virginia abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Department of the Interior (Department), acting by and through the Secretary of the Interior (Secretary).

ARTICLE I: INTRODUCTION, PURPOSE AND RESPONSIBLE ADMINISTRATIVE AGENCY

A. *Authority:* This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (the Federal Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253 to elect to enter into an Agreement for the regulation and control of

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surface coal mining and reclamation operations on Federal lands within that State. This Agreement provides for such regulation within West Virginia except on lands containing leased Federal coal consistent with the State and Federal Acts, the West Virginia State Program (State program), and the Federal Lands Program (section 523(a) of the Federal Act and 30 CFR parts 740-745).

B. Purpose: The purpose of the Agreement is to: (1) Foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations on Federal lands; (2) eliminate unnecessary intergovernmental overlap and duplication; and (3) provide uniform and effective application of the State program on all lands except those containing leased Federal coal in West Virginia.

C. Responsible Administrative Agencies: The Department of Natural Resources, Reclamation Division (DNR) is responsible for administering this Agreement on behalf of the Governor on Federal lands throughout the State. The Office of Surface Mining Reclamation and Enforcement (OSM) is responsible for administering this Agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR Chapter VII. The Federal lands in West Virginia covered by this Agreement are predominantly those under the jurisdiction of the United States Department of Agriculture, Forest Service. It is understood by all parties that the Forest Service or the Federal land management agency, if other than the Forest Service, will continue to govern mining operations on Federal lands covered by this agreement pursuant to laws, regulations, agreements, and restrictions for which the respective agency is responsible. These requirements are in addition to the requirements discussed in this Agreement.

ARTICLE II: EFFECTIVE DATE

After it has been signed by the Governor and the Secretary, the Agreement shall take effect upon publication in the FEDERAL REGISTER as a final rule. This Agreement shall remain in effect until terminated as provided in Article X.

ARTICLE III: DEFINITIONS

Terms and phrases used in this Agreement which are defined in 30 CFR parts 700, 701 and 740, and the State program shall be given the meanings set forth in said definitions.

ARTICLE IV: APPLICABILITY

A. Applicability to Federal Lands: In accordance with the Federal Lands Program in 30 CFR part 740, the laws, rules, terms, and conditions of the State program (as conditionally approved effective January 21, 1981, 30 CFR part 948, or as hereinafter amended in accordance with 30 CFR 732.17) are applicable to Federal lands within West Virginia. This

Agreement does not apply to operations on Federal lands containing leased Federal coal.

B. Filing of Appeals: Orders and decisions issued by DNR in accordance with the State program that are appealable shall be appealed to the State of West Virginia's Reclamation Board of Review. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

ARTICLE V: REQUIREMENTS FOR COOPERATIVE AGREEMENT

The Governor and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. Authority of State Agency: DNR has and shall continue to have authority under State law to carry out this Agreement.

B. Funds: Upon application by the DNR and subject to the availability of appropriations, the Department shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided in section 705(c) of the Act and 30 CFR 735.16. If sufficient funds have not been appropriated to OSM, OSM and DNR shall promptly meet to decide on measures that will insure that mining operations are regulated in accordance with the State program. If agreement cannot be reached, then either party may terminate the Agreement in accordance with Article X. Funds provided to the State shall be adjusted in accordance with Office of Management and Budget Circular A-102, Attachment E, and shall be reduced by the amount of fees collected by the State that are attributable to the Federal lands covered by this Agreement.

C. Reports and Records: DNR shall make annual reports to OSM pursuant to 30 CFR 745.12(d), containing information respecting its compliance with the terms of this Agreement. Upon request, DNR and OSM shall exchange information developed under this Agreement except where prohibited by Federal law. OSM shall provide DNR with a copy of any final evaluation report concerning State administration and enforcement of this Agreement.

D. Personnel: DNR shall provide the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal and State Acts and the State program.

E. Equipment and Laboratories: DNR shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

F. *Permit Application Fees:* The amount of the fee accompanying an application for a permit shall be determined in accordance with Section 20-6-9(f) of the Code of West Virginia (1931), as amended. All permit and civil penalty fees collected from operations on Federal lands shall be retained by the State and deposited with the State Treasurer. The financial status report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of permit application fees collected and attributable to Federal lands during the prior Federal fiscal year. This amount shall be disposed of in accordance with Federal regulations, and OMB Circular No. A-102, Attachment E.

ARTICLE VI: REVIEW OF A PERMIT APPLICATION PACKAGE

A. *Contents of Permit Application Package:* DNR and the Secretary shall require an operator proposing to conduct surface coal mining and reclamation operations on Federal lands covered by this Agreement to submit a permit application package in an appropriate number of copies to DNR. DNR will furnish OSM a copy if OSM so requests. The permit application package shall be in the form required by DNR and include any supplemental information required by OSM or the Federal land management agency. The permit application package shall include the information required by, or necessary for, DNR to make a determination of compliance under 30 CFR 740.4(c)(2) with any conditions or special requirements imposed by the Federal land management agency and with the requirements of the State program, including:

1. *W. Va. Code*, Section 20-6-1 *et seq.*, as amended;
2. Applicable regulations of the West Virginia Surface Mining Reclamation Regulations, 20-6-Series VIII (1981);
3. Requirements of the West Virginia DNR Reclamation Division "Technical Handbook of Standards and Specifications for Mining Operations (1981)."

B. *Review Procedures:* 1. DNR shall assume primary responsibility for the analysis, review, and approval or disapproval of permit application packages required by 30 CFR 740.13 for surface coal mining and reclamation operations on Federal lands in West Virginia except those containing leased Federal coal. DNR shall be the primary point of contact for operators regarding decisions on the permit application package and will be responsible for informing the applicant of all joint State-Federal or Federal determinations.

2. Upon receipt of a permit application package that involves surface coal mining and reclamation operations on Federal lands covered by this agreement, DNR shall (1) transmit a copy of the complete permit application package to the Federal land man-

agement agency with a request for review pursuant to 30 CFR 740.13(b)(4), and (2) provide OSM with relevant information to allow OSM to determine whether or not the proposed surface coal mining and reclamation operation is prohibited or limited by the requirements of section 522(e) of the Federal Act (30 U.S.C. 1272(e)) and 30 CFR parts 760-762 with respect to Federal areas designated by Congress as unsuitable for mining. DNR shall be responsible for obtaining, in a timely manner, the views and determinations of any other Federal agencies with jurisdiction or responsibility over Federal lands affected by a permit application package in West Virginia.

3. OSM will provide technical assistance to DNR when requested if available resources allow and will process requests for determinations of compatibility and valid existing rights under 30 CFR part 761 relating to Federal areas designated by Congress as unsuitable for mining. OSM will be responsible for ensuring that any information OSM receives from an applicant is promptly sent to DNR. OSM shall have access to DNR files concerning mines on Federal lands. The Secretary reserves the right to act independently of DNR to carry out his responsibilities under laws other than the Federal Act. A copy of all resulting correspondence with the applicant that may have a bearing on decisions regarding the permit application package shall be sent to the State.

4. DNR shall prepare the required technical analysis and written findings on the permit application package. If requested by the Federal land management agency, a draft of these documents shall be sent to it for review and comment.

5. The permit issued by DNR shall incorporate any terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and shall condition the initiation of surface coal mining operations on compliance with the requirements of the Federal land management agency. After DNR issues the decision on the permit application package, it shall send a notice to the applicant, the Federal land management agency, and OSM with a statement of findings and conclusions in support of the action.

ARTICLE VII: INSPECTIONS

DNR shall conduct inspections on Federal lands covered by this agreement and prepare and file inspection reports in accordance with the approved Program

A. *Inspection Reports:* DNR shall, within 15 days of conducting any inspection on Federal lands, file with OSM an inspection report describing (1) the general conditions of the lands under the permit; (2) whether the operator is complying with applicable performance and reclamation requirements; and (3)

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the manner in which specific operations are being conducted.

B. DNR Authority: DNR shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described in this Agreement and the Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

C. OSM Authority: OSM may conduct inspections of surface coal mining and reclamation operations on Federal lands for the purpose of evaluating the manner in which this Agreement is being carried out and to insure that performance and reclamation standards are being met. In order to facilitate a joint Federal-State inspection, OSM will ordinarily give DNR notice of its intent to conduct an inspection. When OSM is responding to a citizen complaint of an imminent danger to the health or safety of the public or a significant, imminent environmental harm pursuant to 30 CFR 842.11(b)(1)(i), it will contact DNR if circumstances and time allow, prior to the Federal inspection. OSM may conduct any inspections necessary to comply with 30 CFR part 842. If an inspection is made without DNR inspectors, OSM shall provide DNR with a copy of the inspection report within 15 days after inspection. The Secretary reserves the right to conduct inspections without prior notice to DNR to carry out his responsibilities under the Act.

D. Witness Availability: Personnel of the State and of the Department of the Interior shall be mutually available to serve as witnesses in enforcement actions taken by either party.

Article VIII: Enforcement

A. DNR Inforcement: DNR shall have primary enforcement authority on Federal lands covered by this agreement in accordance with the State program and this Agreement. During any joint inspection by OSM and DNR, DNR shall take appropriate enforcement action, including issuance of orders of cessation and notices of violation.

B. Notification: DNR shall promptly notify the Federal land management agency of all violations of applicable laws, regulations, orders, and approved permits subject to this Agreement and of all actions taken with respect to such violations.

C. Secretary's Authority: (1) This Agreement does not affect or limit the Secretary's authority to enforce provisions of laws other than the Act. (2) During an inspection made solely by OSM or any joint inspection where DNR and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR parts 843

and 845. Such enforcement action shall be based on the Act or the substantive requirements of the State program and shall be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

ARTICLE IX: BONDS

A. Performance Bond: DNR shall require all operators on Federal lands to submit a performance bond to cover the operator's responsibilities under the Federal Act and the State program, payable to both the United States and West Virginia. The performance bond shall be of sufficient amount to comply with the requirements of both State and Federal law, and release of the performance bond shall be conditioned upon compliance with all applicable requirements. DNR may release the operator from any obligation under the performance bond with the concurrence of the Federal land management agency. If this Agreement is terminated: (1) The bond will revert to being payable only to the United States to the extent that Federal lands are involved, and (2) the bond will be delivered by DNR to OSM if only Federal lands are covered by the bond.

B. Forfeiture: In the event of forfeiture by an operator of the performance bond for surface coal mining and reclamation operations on Federal lands covered by this agreement, the State shall use funds received from bond forfeiture and, where necessary, funds from the West Virginia Special Reclamation Fund (pursuant to Section 20-6-12(h) of the West Virginia Surface Coal Mining and Reclamation Act) to ensure that reclamation is accomplished in accordance with the State program and the approved permit.

ARTICLE X: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XI: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated in whole or in part, it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XII: AMENDMENT OF COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIII: CHANGES IN STATE OR FEDERAL STANDARDS

A. Time for Changes: The Secretary or the State may from time to time promulgate new Federal or State regulations, including new or revised performance or reclamation

requirements or enforcement or administration procedures. OSM and DNR shall immediately inform each other of any final changes and of any effect such changes may have on the cooperative agreement. If it is determined to be necessary to keep this Agreement in force, DNR shall request necessary State legislative action and each party shall change or revise its regulations or promulgate new regulations, as applicable. Such changes shall be made under the procedures of 30 CFR Part 732 for changes to the approved State program and sections 501 and 523 of the Federal Act for changes to the Federal lands program.

B. *Copies of Changes:* The State and OSM shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XIV: CHANGES IN PERSONNEL AND ORGANIZATION

DNR and the Secretary shall, consistent with 30 CFR Part 745, advise each other of changes in the organization, structure, functions, duties, and funds of the offices, departments, divisions, and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the head of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the program. DNR and OSM shall advise each other in writing of changes in the location of offices, addresses, telephone numbers, and changes in the names, location and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

ARTICLE XV: RESERVATION OF RIGHTS

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations.

(Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*))

Dated: February 16, 1984.

William Clark,
Secretary of the Interior.

Dated: February 24, 1984.

John D. Rockefeller IV,
Governor of West Virginia.

[49 FR 8917, Mar. 9, 1984]

PART 950—WYOMING

Sec.

950.1 Scope.

950.10 State regulatory program approval.

950.12 State program provisions and amendments disapproved.

950.15 Approval of Wyoming regulatory program amendments.

950.16 Required program amendments.

950.20 State-Federal Cooperative Agreement.

950.30 Approval of Wyoming abandoned mine land reclamation plan.

950.35 Approval of Wyoming abandoned mine land reclamation plan amendments.

950.36 Required abandoned mine land plan amendments.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

§ 950.1 Scope.

This part contains all rules applicable only within the State of Wyoming which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(Sec. 503, Pub. L. 95-87 (30 U.S.C. 1253))

[45 FR 78684, Nov. 26, 1980]

§ 950.10 State regulatory program approval.

The Wyoming permanent program as submitted on August 15, 1979 and as revised on October 23, 1979 and May 30, 1980, is approved effective November 26, 1980. Copies of the approved program are available at:

(a) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East B Street, room 2128, Casper, Wyoming 82601-1918, Telephone: (307) 261-5776.

(b) Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777-7756.

[56 FR 3219, Jan. 29, 1991]

§ 950.12 State program provisions and amendments disapproved.

(a) The following provisions of the Rules and Regulations of the Land Quality Division of the Wyoming Department of Environmental Quality, as submitted on May 1, 1986, are hereby disapproved: